

RULES SUB-COMMITTEE MEETING
COMMITTEE OF THE WHOLE

January 27, 2011

A meeting of the Rules Sub-committee of the Committee of the Whole of the Council of the County of Kaua'i was called to order by the Sub-committee Chair at the Council Chambers, 3371-A Wilcox Road, Līhu'e, Kaua'i, on Thursday, January 27, 2011 at 1:34 p.m., after which the following members answered the call of the roll:

Honorable Derek S. K. Kawakami
Honorable Nadine K. Nakamura
Honorable JoAnn A. Yukimura, Subcommittee Chair

APPROVAL OF AGENDA:

Mr. Kawakami moved to approve the agenda as circulated, seconded by Ms. Nakamura, and unanimously carried.

NEW BUSINESS:

- R-1 Review the Rules of the County Council to determine if the Rules need to be amended or clarified.
- a. Discussion of potential/desired conceptual rule changes;
 - b. Review and discuss desirability, pros and cons, and determine whether more research is necessary for potential rule changes.

Committee Chair Yukimura: We're at new business which is our main business for the day and you see that we've broken it down to a discussion of potential/desired conceptual rule changes and then we'll do a...well we may do it in seriatim and discuss with each one what we want to do and whether we need more research or whether we want to authorize the drafting of the wording. But before we start, I'm going to open it up to the public. Actually, before I open it up to the public, I just wanted for us to do a little exercise about what our end in mind is. I'm borrowing from Steven Covey, who said begin with the end in mind. And so if we might just give some thought to what our end in mind is here. And I took the liberty of doing a beginning of a list that we're looking for council rules that are clear and unambiguous, that are current...you'll see that Walter Lewis suggested we take out physical member in terms of a quorum...that are fair and that are efficient. And I wondered from councilmembers whether you want to add anything on that that comes to mind and the public will be welcome to say something too when their time to testify comes. And we can add on. We don't have to just do it right now but as ideas come to mind. Anything else right now?

Mr. Kawakami: If not, I'm ready.

Committee Chair Yukimura: Okay, thank you then. Then I...the chair will now suspend the rules, although in looking over the rules, I don't know why we're suspending the rules, but we'll get to that later and invite the public to speak on the agenda.

There being no objection, the rules were suspended.

Committee Chair Yukimura: Anybody?

(Inaudible.)

Committee Chair Yukimura: Do you want to come forward and state your name please.

KEN TAYLOR: Ken Taylor.

Committee Chair Yukimura: Thank you.

Mr. Taylor: (Inaudible) Chair and council...committee for having this. My question is...we got this one sheet (inaudible) Ideas for Rule Change.

Committee Chair Yukimura: Yes.

Mr. Taylor: (Inaudible). Are there other documents that you can share with us that (inaudible)?

Committee Chair Yukimura: We will be referring to rules of other counties and this list is an attempt to compile what we have received so far in this new term beginning with, as you remember, Councilwoman Kawahara made a statement at our inaugural meeting. So we have copies of that testimony. But I don't know if you need all of that because we are going to go over each of the rules as we...I mean each of the proposals as we speak. And this is going to be mainly committee discussion. But I'll let people speak at the beginning and maybe at the end.

Mr. Taylor: The other question I have (inaudible) will you be discussing these rules one at a time and (inaudible).

Committee Chair Yukimura: Yes.

Mr. Taylor: (Inaudible.)

Committee Chair Yukimura: No. You know there's a distinction between members of the committee and members of the public. So I think if...well, I'll play it by ear. We do have a small group, but we couldn't do this in a room of 30 or 40.

Mr. Taylor: I understand that.

Committee Chair Yukimura: Yeah and so maybe if this number stays as is we may have a more informal approach. I will have to play it by ear.

(Inaudible.)

Committee Chair Yukimura: Right, right, that's true.

(Inaudible.)

Committee Chair Yukimura: Okay, then if that is the case, instead of asking for opening comments, I will just start going down the rules and wait for people to raise their hand and see if they want to talk on the measure. Okay. All right. Mr. Mickens, either you have to move or we have to move this blackout camera.

(Inaudible.)

Committee Chair Yukimura: Okay, I'll ask that too, all right. Councilmember Nakamura made a good suggestion. She said that some people might want to just testify, leave, and I see a nod of assent there. So in that case, we will have the auditor, who's present today and who nodded that he would like to speak up front and then leave, and so the rules are suspended. And Mr. Pasion, if you would state your name for the record and begin your testimony.

ERNESTO PASION, County Auditor: Madame Chair and members of the subcommittee, for the record Ernie Pasion, county auditor. I have voluntarily provided you...

Committee Chair Yukimura: Yes, you have.

Mr. Pasion: ...in my research of the other counties, copies of their rules, council rules, which I thought would be very valuable as reference materials for this subcommittee. I went through some of them and I found a lot of good things that could be added into our council rules.

One particular thing that I would like to be added to our council rules pertains to the office of the county auditor wherein it will be added...I provided you...

Committee Chair Yukimura: Mr. Pasion, may I interrupt and just tell councilmembers that your cover letter to those rules...

Mr. Pasion: Right.

Committee Chair Yukimura: ...is in our section on public testimony so they can follow along, perhaps, because the wording is there.

Mr. Pasion: I believe it's under No. 17 of your Ideas for Rule Changes.

Committee Chair Yukimura: Yes, we'll be taking that up as we go over the Ideas for Rule Changes and also, if you recall, when you sent us your cover letter, you suggested some wording.

Mr. Pasion: That's correct.

Committee Chair Yukimura: Okay, so I'm just referring them so they can look at that now.

Mr. Pasion: And that reflects the council rules of the city as well as the other counties.

Committee Chair Yukimura: Okay, I'm sorry to interrupt, so please proceed. I think everyone has your cover letter.

Mr. Pasion: And my understanding too, because of HRS Chapter 103D, is that the council chair is the chief procurement officer of the legislative branch as elected by the members of the council. You know, he or she represents the body for procurement stuff. And my understanding also is that for practical purposes that minor procurement would be just through him rather than

going to the whole body. I couldn't imagine with going for let's say the state auditor going to the state legislature asking everybody, every member of the House and the Senate, for their approval when they only can get the nod of the Speaker and the Senate President, so.

Committee Chair Yukimura: Yes.

Mr. Pasion: I hope that will be reflected in the council rules. But basically that's...I have submitted the suggested amendment to our council rules, which is the amendment to council Rule No. 3(a)(9), so.

Committee Chair Yukimura: Yes, thank you very much. I sent you an email this morning asking if you knew where your auditor related rules were in each of the counties. Maybe I didn't get that...

Mr. Pasion: Well, it's...if you look at the city, if you look under the chair, it's covered by (c)...

Committee Chair Yukimura: Rule number...

Mr. Pasion: Wait, wait, wait.

Committee Chair Yukimura: It would be officers and their duties, Rule No. 4?

Mr. Pasion: Rule No. 4 and C (3) and (4). It doesn't specify the...

Committee Chair Yukimura: Page 7.

Mr. Pasion: ...administrative agencies under the legislative branch. But it says, to provide for the coordination of all administrative activities and to see that they are honestly, efficiently, and lawfully conducted. And then in (4), to sign all instruments requiring execution or agreement by the council and to act as the chief procurement officer of the legislative branch pursuant to HRS Chapter 103D.

Committee Chair Yukimura: Okay, yes, thank you, that's helpful.

Mr. Pasion: Yeah, and then as far as Maui, I believe it's on Rule 5, No. 13.

Committee Chair Yukimura: This is City & County rules?

Mr. Pasion: No, that's Maui's, the one I just mentioned.

Committee Chair Yukimura: Maui, I'm sorry.

Mr. Kawakami: On page 4.

Mr. Pasion: Rule 5, A-13.

Committee Chair Yukimura: On Maui?

Mr. Kawakami: Make changes or modifications in proceedings, acts, or reports...is that where you're at?

Mr. Pasion: No, it says, coordinate all legislative intergovernmental meetings, functions and activities on behalf of the council. Page 5 of the County of Maui, page 5 of Maui.

Committee Chair Yukimura: Page 5, rule number?

Mr. Pasion: Rule No. 5.

Committee Chair Yukimura: No.

Mr. Pasion: Yeah, for your information, Maui does not have any separate county auditor's office. They have a legislative auditor under the council (inaudible).

Committee Chair Yukimura: Okay, but you're referring us to something in a Maui rules or is it...

Mr. Pasion: Yeah, it...because of the council chair's responsibility as far as...

Committee Chair Yukimura: Okay, we're still not following where you're referring to.

Mr. Pasion: If you look at Rule No. 5, page 4 and then go to the next page, page 5, number 13, it says, coordinate...this is the duty of the council chair, coordinate all legislative and intergovernmental meetings, functions, activities...

Mr. Kawakami: Excuse me, my number 13 is completely different than the 13 that you're referring to. You're referring to Rule No. 5...

Mr. Pasion: Of Maui?

Mr. Kawakami: Number 13 on Maui's rules, my number 13 reads, make changes or modifications in proceedings...I'm not sure if the committee members are reading the same thing that I'm reading.

Committee Chair Yukimura: No, you...you're...I think you're referring to Rule No. 6, Officers and Their Duties and the duties of Council Chair, so.

Mr. Pasion: Yes, yes, yes.

Committee Chair Yukimura: Okay, so it's on page 6 and it's number...

Mr. Kawakami: 13.

Committee Chair Yukimura: 13. Okay, coordinate all legislative and intergovernmental meetings, functions...

Mr. Pasion: Yeah, they don't specify the different administrative agencies or departments under the council.

Mr. Kawakami: I have a question.

Committee Chair Yukimura: Yes, go ahead.

Mr. Kawakami: So it's your...in your belief that the chair should coordinate all legislative and intergovernmental meetings and not necessarily the intergovernmental committee chair?

Mr. Pasion: No, in my...no, the chair is the administrative officer of the council as far as administrative duties.

Mr. Kawakami: But are you reading...are we reading off the same rule now? Is it Rule 6, number 13?

Committee Chair Yukimura: Yes, it is.

Mr. Kawakami: Coordinate all legislative and intergovernmental meetings, functions, and activities on behalf of the council; provided that, any contract for lobbying on the council's behalf shall be approved by the council by resolution. Is that what we're referring to?

Mr. Pasion: Yeah, that's what Maui decided to do and they can do anything, you know, after that. I mean it's...that's the only one that I can see that's applicable to...to the administration of the council services and elections and other stuff.

Committee Chair Yukimura: I think we'll probably focus on the ones...the counties where there is an auditor.

Mr. Pasion: Okay.

Committee Chair Yukimura: So, we probably won't adopt this provision.

Mr. Kawakami: Chair, I'm just interested in hearing the logic behind a recommendation on that rule, though, coming from the auditor's office. What is the logic behind adopting the rules?

Committee Chair Yukimura: I think he's just pointing out that this is the closest thing to defining the council...

Mr. Pasion: Chair's.

Committee Chair Yukimura: ...council chair's role.

Mr. Pasion: Role.

Committee Chair Yukimura: And I don't think it's the best articulation of what he needs for... So I don't think he'll mind if we just ignore it.

Mr. Kawakami: Okay, okay, that's fine.

Committee Chair Yukimura: I mean we overlook this provision in favor of the more explicit provisions in counties where there is an auditor, right?

Mr. Pasion: Right, right, right.

Committee Chair Yukimura: Thank you.

Mr. Pasion: And then for the County of Hawai'i, Rule No. 4-2(h), it says, provide for the coordination of all meetings, functions, and legislative and administrative activities of the council, and assure that they are honestly, efficiently, and lawfully conducted.

Committee Chair Yukimura: Okay.

Mr. Pasion: So, but the best one I would say is the city... City & County. City & County of Honolulu would be...

Committee Chair Yukimura: City & County has the most explicit and you've given us that wording, yes.

Mr. Pasion: Yeah.

Committee Chair Yukimura: And also one of your chief concerns is the chief procurement officer function and the clarity on that.

Mr. Pasion: That is correct.

Committee Chair Yukimura: All right.

Mr. Pasion: Because the office of the county auditor is new and since it was established, the council rules were never revised or amended to reflect the oversight of the office of the county auditor.

Committee Chair Yukimura: Yes, thank you, that's very clear and we will attempt to make sure that the auditor's office is integrated into the rules.

Mr. Pasion: Okay, thank you very much.

Committee Chair Yukimura: Thank you. Anyone else want to testify at the outset? Oh, excuse me, Councilmember...Mr. Pasion, Councilmember Nakamura has a question, I'm so sorry.

Ms. Nakamura: Hi. My question is, is there anything outside of these established rules for Honolulu, Maui and Big Island that you think applies to Kaua'i where you would like to have greater clarity in your interactions with the council?

Mr. Pasion: What I've done is I have looked at the other jurisdictions, which we normally do, in which...when I was the deputy county clerk, and whenever they got any research requests from any of the councilmembers that they would say, look at what the other jurisdictions do and not just look at what we have here, and sometimes we even look at what they have in the mainland. So I just looked at, you know, the...I could come back and I don't know...

Ms. Nakamura: I think it would be...

Mr. Pasion: I don't think that this is the...the first day and the last day of the subcommittee meetings, so we could come back and then make some more recommendations.

Ms. Nakamura: I'd like to see what other way...other areas where, as we looked at one of the criteria being clear about how the body interacts with your office, so any recommendations, I think, would be good to look at.

Mr. Pasion: Okay, we'll do that, we'll do that.

Ms. Nakamura: Thank you.

Mr. Pasion: Yeah, okay, thank you.

Committee Chair Yukimura: Thank you, Ernie. Anyone else want to testify in general? Otherwise...okay, Mr. Mickens.

GLENN MICKENS: Thank you, JoAnn, for the record Glenn Mickens. I'm just a little confused. We're going over this agenda that you gave us, but part of it...it's intermixed, right? You got the big...you got O'ahu on the agenda, and you've got Hawai'i on the agenda, so you're mixing the others, which we don't have obviously, what the Big Island's doing, what Honolulu's doing and you're asking questions about these. We can't follow this. But then part of it, you're staying with our...the rules of our council, right?

Committee Chair Yukimura: Did you state your name for the record?

Mr. Mickens: Yes.

Committee Chair Yukimura: Okay, thanks. You know, we are just going to list conceptually what kind of changes we want and at our next session we will have some wording for everyone to look at. The references here are for the committee members to look at the other counties' rules where they seem to have the best language...

Mr. Mickens: Okay.

Committee Chair Yukimura: ...and as a general idea of how we would language a new rule change. But we're not going to make any decisions today and we aren't actually ready with any specific wording at this point.

Mr. Mickens: Okay.

Committee Chair Yukimura: So, that's where we are...

Mr. Mickens: My only concern was we can't follow this obviously.

Committee Chair Yukimura: I happen to have an extra copy if you and I mean I'm...you know, we won't always make these things available to everybody in the public, but I do...oh, okay. So Councilmember Nakamura has an extra copy, so if you guys want to follow along with these, you can.

Mr. Mickens: Yeah, that would be nice.

Committee Chair Yukimura: All right.

Mr. Mickens: That's all, so then we know that when you're back on the agenda for our council rules only, we're not looking at something and say where's 3(b)? It's not even on there if it's part of O'ahu's thing, okay?

Committee Chair Yukimura: All right, thank you.

Mr. Mickens: Thank you.

Committee Chair Yukimura: Thank you Ernie and Lani.

(Inaudible.)

Committee Chair Yukimura: You can share those, right?

Mr. Mickens: Yeah.

Committee Chair Yukimura: Okay, yeah, that's a lot of paper.

Mr. Mickens: Right.

There being no one else wishing to testify on this item, the meeting was called back to order, and proceeded as follows:

Committee Chair Yukimura: Okay, we're still in session and so...while we're...oh, okay. Actually, I'm going to take a moment of personal privilege and I just want to acknowledge the staff people. And actually Councilmember Nakamura and Councilmember Kawakami, we stayed...I think the staff came at least a quarter to eight in the morning, if not earlier, and we left this place at 8:30 in the evening last night. So it was a very, very long day and here they all are yet working again. So thank you.

Mr. Kawakami: And hoping that they're not going home at 8...

Committee Chair Yukimura: And hoping...and resolving that we will not be going home at 8 tonight. Okay. So we're on agenda item, Review the Rules of the County Council to determine if the Rules need to be amended or clarified. I have to say that we got a lot of suggestions for how the rules are to be clarified. We've listed them to the best of our ability. We may have missed something and I'm sure we'll hear about it if we have. So I want to...my idea of process, if the other members agree, is that we would go down one-by-one and talk about these recommended changes, see if we need more information, have some discussion about the pros and cons. I think they might mix together items a and b, but that's okay if we can do it in an orderly manner. Okay. All right.

So going down this list of Ideas for Rule Changes, No. 1 is Table of Contents. Do we want a table of contents? You'll notice that we're the only county that doesn't have a table contents. So this is an easy one, right? So that's something that we would like staff to prepare for our next meeting.

Mr. Taylor: That you want it or you don't want it?

Committee Chair Yukimura: That we want it. Okay and I'm not going to take a vote unless we get into some heated arguments. Okay, number one is done.

No. 2, Adoption and Amendment History of Current Council Rules. The only county that has that is the City & County of Honolulu. It's this little table that is page 3. I mean you have the title page, the resolution, and then this adoption and amendment history of current rules. Oh, the one I saw had a little bit more, but it just gives a history so if you want to go back to what the old rules are and when it was adopted, you'd know when to do that. Is this something we want or not?

Mr. Kawakami: I'm not sure...excuse me, Madame Chair.

Committee Chair Yukimura: Yes.

Mr. Kawakami: Can you go over what the purpose of having the adoption and amendment history for is and is it significant in your eyes?

Committee Chair Yukimura: The question is, is it significant? It helps somebody like me, I guess, who's a lawyer, know what the history of amendments were. And this one doesn't really show very... I saw one that actually had dates and numbers of resolutions so you could go back and find them. So it's not necessary.

Ms. Nakamura: I think every...every council adopts their rules. So it's going to change every year or could potentially change every two years.

Committee Chair Yukimura: Right.

Ms. Nakamura: And then you could have resolutions in-between to change, but for me it's not a big deal, so.

Committee Chair Yukimura: Okay.

Ms. Nakamura: I don't have any strong feelings.

Committee Chair Yukimura: Councilmember Kawakami?

Mr. Kawakami: Oh, you know what, I think just for a clarity check, I think the purpose of this is just to go down this list, but I'm assuming that this is almost like homework for us to go and dig a little bit deeper to see because we're not taking a formal vote. So we can all agree to everything today, but ultimately it's going to be back at the table for further discussion and ultimately decision making as far as the recommendation to the council as a whole.

Committee Chair Yukimura: It's definitely not going to...we're definitely not going to make decisions today.

Mr. Kawakami: Yeah, okay.

Committee Chair Yukimura: But it is an effort to flush out concerns and considerations.

Mr. Kawakami: Sure, okay.

Committee Chair Yukimura: And if we want to do more research.

Ms. Nakamura: I think find out a model, yeah.

Committee Chair Yukimura: Code or whatever?

Mr. Kawakami: My main concern would be how much of a staff effort would it take for them to go back and look at every single amendment throughout the history of our rules to now come up with a sheet for moving forward, the initial effort. That would be my main concern. I mean, it's great that we can go and see that on this date this rule changed and so we can refer to the change, but the initial...and I'm not in staff so I would be concerned as to how many rules were changed since these rules were adopted and how hard would it be for them to go now and track back and see when these changes were made. That'd be my main concern.

Committee Chair Yukimura: Thank you. I think that's a valid concern. And maybe...I don't think you have to go back far with this, especially because we haven't acted on our rules for a long time. But if it's going to take a lot of work, I don't think we need it, you know.

Ms. Nakamura: I agree.

Committee Chair Yukimura: And if we just start it now so we just keep tracking when changes are, that may be the way to go.

Mr. Kawakami: I could agree to something like that. Because nonetheless even if the changes weren't made, it would still require them to go and kind of look still maybe through minutes or...you know, so.

Committee Chair Yukimura: Right. Good point. Thank you, any further discussion on that?

Okay, next one, credential committees – delete. Look at our rule 1(a)(2). This is Kaua'i rule and we may need to get some history from people who are here or who've been around for a while. Rule 1(a)(2) says...this is about the initial convening of the council, which we did on December 1 and it mentions a credentials committee shall immediately examine the credentials of members elected and if the majority of credentials are in order, the committee shall so report and the oath of office shall be administered. I don't remember a credentials committee. Does anybody remember one? We did have, staff is saying... Do you want to take the mike and let us know about this, Jade?

JADE TANIGAWA, Council Services Staff: At every inaugural meeting the credentials committee prepares a report.

Committee Chair Yukimura: Can you talk into the mike so the public can hear you too?

Ms. Tanigawa: Oh, I'm sorry. At every inaugural meeting there's a credentials committee made up of three members and they go over the qualifications and it's a table and then each member beforehand signs. They attest to the various credentials for becoming a councilmember and the report is filed on that meeting day.

Committee Chair Yukimura: Okay and who's on the committee? Are these incoming councilmembers or they're third parties?

Ms. Tanigawa: It's usually incoming councilmembers who previously served the term before. So, off the top of my head...I can't remember the three this time.

Committee Chair Yukimura: That's okay.

Ms. Tanigawa: But there were three members.

Committee Chair Yukimura: Okay.

Ms. Tanigawa: They don't officially meet, but they do examine the credentials.

Committee Chair Yukimura: Okay and the credentials are basically that you are of a certain age, that you were elected, that you are a registered voter.

Ms. Tanigawa: Registered voter, yeah.

Committee Chair Yukimura: Okay, so we'll just leave that alone.

Mr. Kawakami: Yeah and Madame Chair, if I may, I would like to go furthermore because in one of HSAC's legislative packages, we're introducing a measure to further tighten up that people sign off on their credentials when they're running for office even because there was a situation in Maui and they run by district where there's somebody in question as to whether or not they reside in that district. So while HSAC is trying to tighten it up, I think it would be counter-productive for us to start relaxing any kind of proof of credentials. So I would respectfully ask that we keep it there as is.

Committee Chair Yukimura: I think that's clear. Thank you for giving us an example...a concrete example about why credential committee is important and the process of verifying credentials. Okay, so we keep that.

Going on to No. 4, Order of Committees on Committee Meeting Day Rule 1(c).

Mr. Kawakami: Madame Chair, right off the top of my head I don't have any problem with the way that the committee meetings are ordered. In fact, I think we've operated with great latitude as far as making changes when necessary, so.

Committee Chair Yukimura: Thank you and I raised that issue partly because of my memory of how we used to have public works before planning and sometimes we didn't get to our planning meeting. Actually, meeting after meeting after meeting, we didn't get to our planning meeting until about 4 o'clock or 5 o'clock and that was getting very difficult to get any business done because people just wanted to go home. And we haven't been having problems, but one thing would be to...well, now planning's first and then you could actually rotate if you wanted to, but I think there's no problem at this point. So we'll just leave it as it is. And I saw Mr. Taylor, do you want to say something?

(Inaudible.)

Committee Chair Yukimura: No, you have to take the mike, please.

(Inaudible.)

Committee Chair Yukimura: Okay, so we're going to...no change.

All right, Rules 1(b), (c), (d), (e). Rule 1, Notice on website per Sunshine Law. This was a recommendation of Walter Lewis. And he's not here to explain what he means, but he actually said just (b) and (c), but I'm thinking even executive sessions should be noticed. And he says a provision...if you look at his statement under public testimony, he says a provision in rule 1(b) and (c) should be made for giving notice on the county website. And it is true that these rules don't, I think, incorporate any modern IT issues and we may want to do that. Councilmember Kawakami?

Mr. Kawakami: We're currently posting on our website as it is.

Committee Chair Yukimura: Yes, but not per rules, not required.

Mr. Kawakami: So it would just be to clarify, okay.

Committee Chair Yukimura: I'm assuming that is what he is proposing. And I'm not even...so, let's see. I'm not even sure that here's the best place for notice in the...you know. But let's see (b), (c), (d) special meetings. Oh, okay and then there's (e) executive sessions.

ALFRED B. CASTILLO, JR., County Attorney: Excuse me, Chair Yukimura.

Committee Chair Yukimura: Yes.

Mr. Castillo: Al Castillo, county attorney.

Committee Chair Yukimura: Thank you.

Mr. Castillo: I just was wondering, I know that this is a place for public input. I'm just wondering in terms of procedure and process, whether or not...where in this process of amending the rules will there be a consultation with the county attorney's office? And the reason why I say that is you may have the public...a member of the public desire something placed into your rules, but however, sometimes the rules aren't called for in our statutes or any...it wouldn't have any basis in the law and it would invite problematic notice requirements for the council. So I'm just asking basically if you...there's somewhere along the line we would ask that this be vetted out with the county attorney's office or even with your legal analyst and how a change will affect the overall way that we do business.

Committee Chair Yukimura: Thank you, county attorney, that's a good point and when we circulate the proposed language, we will send it to your office for your input too, yeah.

Mr. Castillo: Okay.

Ms. Nakamura: Can we also ask our legal analyst and county attorney present that if we're going over any item that may raise a red flag that you just speak to the issue.

Mr. Castillo: Oh, absolutely.

Ms. Nakamura: Okay.

Committee Chair Yukimura: Thank you. So we're on the suggestion that we include somewhere in our rules the requirement, because if it becomes part of the rules it would become a requirement, that our posting of minutes would not just be physically at places where we normally post them, but also on the web.

Ms. Nakamura: There's a rule on that.

Committee Chair Yukimura: Yes, that's why I said it may not be the right place. I'm not sure where that...publication...

Ms. Nakamura: You know where that rule is? Okay, okay.

Committee Chair Yukimura: Do we know where that place is? Otherwise, we can just authorize the concept to be proposed in writing in the proper place.

Ms. Nakamura: Yeah.

Mr. Kawakami: Is this in our charter?

Committee Chair Yukimura: What's in our charter?

Ms. Nakamura: No, it...

Committee Chair Yukimura: The posting...you know, it would be...it's probably in our Sunshine Law. Is that not right, Peter? The posting requirements are in our Sunshine Law?

Ms. Nakamura: It...they're someplace in here.

Committee Chair Yukimura: Okay, so I noticed the other counties say in Chapter 92 and...they can add to it. So, if...it may be in Chapter 92 and we could also look in the other council rules of the other counties. They may have a special section because our rules are pretty...

Ms. Nakamura: Here we go, Rule No. 15.

Committee Chair Yukimura: Oh, good, thank you. Yes.

Ms. Nakamura: (c).

Committee Chair Yukimura: Good, yes.

Ms. Nakamura: So we could add on to that there or we could just have a separate IT section.

Committee Chair Yukimura: Or thereabouts. Any further discussion?

Mr. Kawakami: I hate to be a total...you know, it just gets my gears turning. So we're referring to this suggestion about posting on the website and my only comment is that the current language just suggests...well, it doesn't suggest, it requires us to be in compliance with Chapter 92 HRS. And we would be creating a rule that would basically be requiring us to post our meetings on our website. Now,

technically if our website had crashed, would we be now be breaking a rule? And not to be a pain in the butt, but you know, it's just...you know, websites crash, and so now are we breaking a rule that we mandated upon ourselves?

Committee Chair Yukimura: That's a good question. I doubt it. It would be called an act of God. I'm kidding. But it is a very important incident to anticipate. Let's let our staff do some research on that. I think there's a way we can...you know, if we've...we went through the act of posting it, it was on there, the site crashed, I don't see how we could be blamed.

Mr. Kawakami: Yeah, okay.

Committee Chair Yukimura: But let us really look into that because that's a real likely scenario. And Mr. Mickens, you had a comment?

Ms. Nakamura: Or make every attempt possible to post it on the website. You know, it's sort of...we can...(inaudible) loosen the language.

There being no objection, the rules were suspended.

GLENN MICKENS: For the record again, Glenn Mickens. I'm not positive this is what Walter meant, but you know, I think we've been going through...the only thing that isn't on the web right now are the communications, bills, resolutions. This is what the public has been asking for since last June and so we don't have to come, you know, 20 miles to pick up a hard copy of what we can get from the thing. So I don't see any legal reason for not doing it. So, I'm not positive that's what Walter meant here, but putting it on the web is the only thing that really isn't... You know, the agenda is on the web. We can pick that up, that's no problem. But we can't get a copy of the bill when it says look at bill such and such or resolution whatever. That's the only thing that we're (inaudible) doing. I don't...you haven't resolved that yet, right, JoAnn?

Committee Chair Yukimura: We passed the resolution authorizing it or expressing our intention and our staff is in the process of trying to do that.

Mr. Mickens: But no date has been set yet...

Committee Chair Yukimura: No, no date has been set...

Mr. Mickens: ...to put it on.

Committee Chair Yukimura: Yes, that's correct.

Mr. Mickens: Okay, well...

Committee Chair Yukimura: But there is a written action on the council that does that...that specifies that. We could include it in our rules. I think the other counties have included things like that in their rules.

Mr. Mickens: Okay. So it would be possible then.

Committee Chair Yukimura: And just because something is being done, you may still want to include it in your rules to show that that is the intent and...of the body that this happened. It's not just an idea of staff that keeps going because there's staff to make it happen.

Mr. Mickens: Right, but that would be the biggest convenience to the public as putting these things on the web. That's all we're asking for. Thank you.

Committee Chair Yukimura: Thank you, Mr. Mickens. All right.

There being no one else wishing to testify on this item, the meeting was called back to order, and proceeded as follows:

Mr. Kawakami: Madame Chair.

Committee Chair Yukimura: Yes.

Mr. Kawakami: May I just ask as a question of process, as we go along in our deliberations, is it your intent to allow members of the public to come in and act as ex-officio committee members in essence? I mean (inaudible) maybe the better suggestion I would have is that we have the dialogue. I'm sure you guys are going to be at the next committee meeting and then they can take these ideas and take our discussion and the minutes from the meetings and then in subsequent testimonials they can come and respond to the way that we're operating and any suggestions that they may have.

Committee Chair Yukimura: Yes. I mean I expressed earlier that there is a distinction between the public and the committee members. I had said I would allow them...

Mr. Kawakami: Okay, that's fine.

Committee Chair Yukimura: ...on a sort of case-by-case basis. If it gets too drawn out, we will have to stop and just move ahead. Because that is an issue. I mean the efficiency issue and us going home at 8:30 at night is something our rules need to address within...as much as possible.

Mr. Kawakami: Okay and then on that note then, may I...although it sounds great to add on all of these extras that we're embarking on as far as our IT endeavors as getting the minutes and everything else on the web, I would be hesitant to include it in rules because from my understanding, this is a...it's an amenity for the members of our public. It's an extra service that we're providing as we move forward and for us to include it in our rules may be a little too early because we're going to be working and some problems I can foresee. Just like how our live streaming has run into some problems, we may run into some potential problems if we start making things so stringent...because a lot of this is going to be on the staff's burden to get it out and I can foresee that maybe during budget time there's going to be times when it lags, so. I'd just be hesitant. I don't think it's a bad idea. But I think we should think about it a little bit more deeply on the unintended consequences.

Committee Chair Yukimura: I hear you. You're concerned that by making it a requirement of the rules, we may put ourselves in a corner.

Mr. Kawakami: Yeah, yeah.

Committee Chair Yukimura: Okay and that is something we'll discuss. It's a genuine concern, I know. I mean it's a very legitimate concern. Okay, so let's move on if we're ready to.

Mr. Kawakami: Okay.

Committee Chair Yukimura: No. 6, Remove "physical" from phrase "physical majority" in Rule 2, which is talking about quorum.

Mr. Kawakami: Madame Chair, if I may?

Committee Chair Yukimura: Yes.

Mr. Kawakami: Would that mean that if we remove physical that I'd be able to participate in our meetings via webcam or Skype or by phone conference?

Committee Chair Yukimura: There is actually in one of the other counties, there is the provision for that. And I think I remember trying to get a Native American when we were discussing...an Inuit lady testified by speaker phone on our resolution against oil drilling in the northwest, yeah. Anyway, and our county clerk at that time said it wasn't possible; he had to post up there in Alaska or wherever. So if we want to do that, we would have to make provision for it.

Mr. Kawakami: Right, because I believe that the County of Hawai'i sometimes they have meetings where some members are in Kona and some members are in the Hilo district, and I know when I was serving on KIUC, we were allowed to participate via phone conference in our open session, but in executive session we were not allowed to participate by phone conference. And it was...it did come in handy at times when we were, you know, traveling abroad and we had to attend these meetings and it would not have been possible if we had not been allowed that latitude. So that's something that could come in handy.

Committee Chair Yukimura: Yeah, you raise really good points.

Ms. Nakamura: Yeah.

Committee Chair Yukimura: Councilwoman Yukimura.

Ms. Nakamura: That's been a...I've seen that provision in a lot of bylaws for non-profit organizations to be able to communicate by phone, videoconferencing, computers, Skype now. So do we want to move to the 21st century?

Mr. Kawakami: So, it brings, to me, much more meat to ponder than just the initial should we remove it because, you know, we're alluding to we might be here physically but not mentally because sometimes I'm that guy, you know. I'm here physically, but my mind is out in the beautiful weather and the ocean.

Ms. Nakamura: Here's another question in the new county facility...meeting facilities, will there be videoconferencing built into the meeting room? Not sure? Let's check too.

Committee Chair Yukimura: Yes, so maybe we'll have our staff go borrow KIUC's rules, see what they have in writing about this. One of the other counties does have a very short provision, as I recall, about teleconferencing. So let's see if we can, you know, maybe even have a proposal in writing for us to look at.

Ms. Nakamura: And then if we do, then we could take out the physical.

Committee Chair Yukimura: Yes and it may be that we can take out the physical anyway. I noticed the other counties don't have it.

Ms. Nakamura: Okay.

Committee Chair Yukimura: But maybe our attorneys can look at that too, whether by taking out physical we're enabling everything else, which means then we would need to have specific rules for that kind of non-present or cyber presence kind of a decision making. Okay, anything more on No. 6?

Ms. Nakamura: Anyway, I would be for exploring this further and you know, if it helps us to have maybe more people at our meetings who would normally wouldn't be able to be here physically, I think that would help.

Committee Chair Yukimura: It might at times help to even have a quorum.

Ms. Nakamura: Okay.

Committee Chair Yukimura: I mean there might have been three of us gone to the Smart Growth Conference and that still is a quorum but barely. Okay, so we're going to do some work on that. All right.

Next item. Rule 3 is Officers and Their Duties. And they outline the duties of the council chair and committee chair, and these are some...a, b, c, and d on our Ideas for Change sheet are some of the things that I noticed might be useful to add.

Ms. Nakamura: Excuse me, may I interrupt?

Committee Chair Yukimura: Yes, yes, of course.

Ms. Nakamura: Did you put the Idea for Rule Changes in order?

Committee Chair Yukimura: I tried to.

Ms. Nakamura: Yeah, it looked like... So if we have some suggestions for Rule, can we...

Committee Chair Yukimura: Yes.

Ms. Nakamura: Is this the time to do it or...

Committee Chair Yukimura: It's good. We can do it.

Ms. Nakamura: Okay.

Committee Chair Yukimura: We will also have a time at the end of the list to add on, but let's see. Yeah, we haven't gone into duties of the chair right now, so would you like to suggest something we've just passed by?

Ms. Nakamura: I noticed that in some of...I think the Honolulu example, maybe some of the others, there's a little bit more language on executive sessions and our actions within the sessions that the Honolulu's example, page 10, Rule 7, so I was just wanting to ask our legal analyst to look at that and possibly expand.

Committee Chair Yukimura: What section was that in Honolulu?

Ms. Nakamura: It's Rule 7, page 10.

Committee Chair Yukimura: Do you want us to look at that now or just have our...

Ms. Nakamura: Yeah.

Committee Chair Yukimura: Okay, that's fine.

Ms. Nakamura: It just expands the language and says what you can and cannot do in executive session, and I think that'll make it more explicit.

Committee Chair Yukimura: Yes, I remember seeing that. Okay, so if our attorney will look into that. Anything else on that? If not, we'll go back to No. 7 of Ideas for Rule Change and look at the duties of the chair. I want to...let's see... So these are sort of...well, 7-a is sort of a catchall, which I don't think we have and is there any discussion on that?

Ms. Nakamura: 7-a?

Committee Chair Yukimura: Yes.

Ms. Nakamura: That's fine. (Inaudible.)

Mr. Kawakami: Assign duties not otherwise...

Committee Chair Yukimura: You know, the chair being the head...the council being the head of the council services and the chair being the administrator, which is how it's set up in our charter. So all...unless the law...there's law or the rules assign certain things, if they're not specified, then...it's a catchall.

Mr. Kawakami: So it automatically...if it's not covered by law or in our rules, it would automatically be a duty now of the clerk or the county auditor?

Committee Chair Yukimura: No, of the chair.

Mr. Kawakami: Oh, of the chair.

Committee Chair Yukimura: Of the chair of the council.

Mr. Kawakami: Oh, okay and it's up to him to prescribe how he's going to delegate these tasks?

Committee Chair Yukimura: Mm-hm, mm-hm.

Mr. Kawakami: It's kind of how we operate now, anyway, yeah?

Committee Chair Yukimura: Mm-hm, mm-hm.

Mr. Kawakami: I'm just checking.

Ms. Nakamura: Yeah.

Committee Chair Yukimura: That's good.

Mr. Kawakami: You know, make sure that...

Committee Chair Yukimura: Okay, if that's okay, we'll move on to 7-b. Now, where did this come from? Receive all communications and present them to the council or committee before which the subject matter is pending. You know, I think the vision is everything comes into the county council, it comes to the chair first, and then he distributes them out. Now, I saw one...okay, so let's check out City & County Rule 4.

Mr. Kawakami: Okay, while we're looking for the rule, can I make a comment on this?

Committee Chair Yukimura: Yes.

Mr. Kawakami: And I may be totally off-base, but the problem that I would have is if I'm dealing directly with a department head or with a constituent and we're going back on proprietary communication, does that now mean that my communication now has to go to the chair?

Committee Chair Yukimura: I believe...

Mr. Kawakami: Because it says that receive all communications.

Committee Chair Yukimura: That's what happens with everything right now. I believe it's all logged in and then it's assigned.

Mr. Kawakami: Nah.

Committee Chair Yukimura: Mm-hm.

Mr. Kawakami: Not all communications.

Committee Chair Yukimura: Mm-hm.

Mr. Kawakami: My emails to department heads? My inquiries that I make on my own?

Committee Chair Yukimura: Well, emails...

Mr. Kawakami: Is it being...is it now being...

Committee Chair Yukimura: I don't know how email works. That's a good question.

Mr. Kawakami: But even letters that I'm sending out too, one-to-one communications and... Is that all being channeled through the chair now? And now would that mean that my communications would be channeled through the chair and now being des...I mean given out to everybody?

Committee Chair Yukimura: No, no. If it's just you, that would not be appropriate. But that's a...you raised a good question. I don't know how the flow of those particular communications go.

Ms. Nakamura: Ask staff.

Committee Chair Yukimura: Staff, you have a...

Ms. Tanigawa: Currently, communications that come into our office...

Committee Chair Yukimura: Can you speak up?

(Inaudible.)

Ms. Tanigawa: Currently communications that come into our office that are addressed to councilmembers or to the chair, you know, we'll open it, time-stamp it, log it in, and have it distributed. Letters...say, Councilmember Kawakami, that you generate on your own but that is passed through staff, that is filed with our records. So, it's not distributed to all members unless you ask that it be done or cc'd, but it is filed within our records division. So they have...if you need it later, they have that information. But it's whatever...rule of thumb is usually whatever is generated through the staff is filed in our records division and whatever comes in is time stamped. And there's always the original that's filed within our records division.

Committee Chair Yukimura: Any questions?

Mr. Kawakami: Madame Chair, one question and it will be directed at our county attorney. Mr. Castillo, if you read the proposed language, would it now be...

Mr. Castillo: I'm sorry, which one.

Mr. Kawakami: It...oh, I'm sorry.

Ms. Nakamura: 7-b.

Mr. Kawakami: Yeah, we're on 7-b. If we were to adopt language similar to this, would that now mean that any personal request that I make would be made privy to the rest of the council? I wouldn't? Okay. Based on this language, though.

Mr. Castillo: You know what? This is my suggestion. I know for a fact that your council chair is working on this particular role, and so, you know, I'd like to withhold any comment on that because I...you know, clarification, I think, should...well, basically what I'm saying is it's being worked on.

Mr. Kawakami: Okay and I'm fine with that, yeah. I know what your intent is, though. The intent is that hey, anything that comes intended for the council, you're trying to make sure that it's in a rule that we all get it.

Ms. Nakamura: Yes.

Mr. Kawakami: That would be the intent, I believe.

Committee Chair Yukimura: Oh, no, no, not that everybody gets it. Just that it be assigned properly, right?

Mr. Kawakami: Oh, okay, okay.

Committee Chair Yukimura: Isn't that what it says?

Mr. Kawakami: Oh, yeah, yeah, yeah.

Ms. Nakamura: Or committee...council or committee.

Committee Chair Yukimura: But it's specifying who's in charge of doing that. I mean who's responsible. He may...

Committee Chair Yukimura: ...delegate...he or she may delegate it, but that is the chair's responsibility.

Mr. Kawakami: I see.

Ms. Nakamura: Yeah.

Committee Chair Yukimura: And that's what it means. Now...and so if you look at...and I'm trying to understand these rules myself but okay, so Hawai'i County says, presiding officer, chairperson of the council shall receive all reports, communications, bills, resolutions, and other items from the public, the mayor, various departments of government, and individual council members, and immediately make—and you notice immediately—make the proper referrals of these matters to the council or to the appropriate committee chairperson(s). All communications shall be numbered and made available to the public, except otherwise provided by law. That's...

Ms. Nakamura: That's a little more explicit and...

Committee Chair Yukimura: Yeah, that's Hawai'i...

Mr. Kawakami: Where is this?

Ms. Nakamura: Yeah.

Committee Chair Yukimura: The Hawai'i rule, page 5.

Ms. Nakamura: I like that.

(f). Committee Chair Yukimura: Hawai'i rule, page 5. Oh, it's Rule 4 and it's

Ms. Nakamura: 2(f).

Committee Chair Yukimura: Yes, receive all reports, communications, bills, resolutions and other items from the public, the mayor...

Mr. Kawakami: But you see the problem that I'm having with this language is that there are at times communication that I'll send out that I'm intending to be confidential and it would pertain to a council or committee. And so what this rule would do is bypass any confidentiality, in my opinion, and make it, you know what I mean, available.

Committee Chair Yukimura: And that's not the intent and so the question is how is that properly handled, something like that, a confidential, individual communication, right? I mean if it's a personal communication that doesn't involve council business, that's one thing. That shouldn't go through the system at all.

Mr. Kawakami: You could probably put in language to the effect of receive all non-confidential communications. But then I think what the county attorney was saying is that our council chair is working diligently on addressing this matter. So maybe we should wait. He may have his own ideas that may work out and so one less thing for us to do.

Committee Chair Yukimura: And we may want to just ask him for his counsel in terms of any rule that we're considering. Because, you see, in these other counties they deal with...they have found a way to deal, maybe it's just unspoken, with confidential matters. And it may be in...some of them say, all bills, resolution and other matters and then one says, all reports, communications, bills and resolutions. Because, let's see, Honolulu County says, to promptly refer all bills, resolution and other matters brought before the council to the appropriate committee or committees subject to an appeal by the committee chair pursuant to procedures established by the chair and then there's a whole slew of sub... And these seem to be mainly communications that are designed for...or destined for the council meetings or committee work. But I have to say that I, as planning committee chair, once received a communication on a subject matter in my committee a month, 30 days, after it was received by the council. So, there was an issue and it was time urgent.

Ms. Nakamura: So prompt is important.

Committee Chair Yukimura: Yeah, on the other hand bills and resolutions, if you say immediately that begins to interface with Rule 10.

Ms. Nakamura: Why don't we just wait for the council's language but make a foot...just a placeholder so we make sure that confidential correspondence is excluded.

Committee Chair Yukimura: Any other discussion on this one. Okay, c...7-c, dispose of matters properly brought before the council subject to appeal of the council. I read this to mean that the chair was responsible for a follow-up to council meetings or was responsible for making sure that there would be a flow of follow-up to any matters that are brought before the council. Any discussion? You want to think about it? Okay.

And then move on to 7-d. This is something that to me was really interesting because we have a chair now who is really inclusive and because there have been many internal matters that have not been addressed in the past. And so if you look

at Maui County Rule 6 on page 6 and it's number A-14 on page 6, hold a chair's meeting, as needed—so it's discretionary—to informally discuss scheduling, operational, or procedural matters that are within the decision making authority of the chair or a committee chair, and that do not require council approval; provided, that all members shall be given written notice of the date, time, and place of the meeting, and the topics to be discussed; and provided, further, that a quorum shall not be required. I believe we haven't researched, that this is something for internal matters, like for example travel. The chair discussed his travel policy with us, sometimes staffing issues or internal communications, website, things like that.

Mr. Kawakami: All in-house things.

Committee Chair Yukimura: Yeah because it's within the...let's see...that do not require council approval. So it would be a sharing of his policies, his ideas, a time to get input, and of course we need to talk to him about this. I think he's...

Ms. Nakamura: Let's ask him what he thinks.

Committee Chair Yukimura: Yeah, I think he's already beginning to do it, but to put this in the rules would highlight it for a chair that's not intending to do this. It would sort of be a reminder in the framework of the workings of the council that this is something that...this is a mechanism available for discussions of...

Mr. Mickens: Pardon me, JoAnn, are you (inaudible) page 6?

Committee Chair Yukimura: Page 6 of the Maui rules.

Mr. Mickens: Right, I've got it, but it's not what...there's A, B, C...there's...you're saying 10?

Committee Chair Yukimura: Maui's rules?

Mr. Mickens: Yeah.

Committee Chair Yukimura: Oh, you know I think I ran into that problem. I think the Maui rules that you have...

Mr. Mickens: Yes.

Committee Chair Yukimura: Well, look for Rule 6.

Mr. Mickens: I'm on Rule 6.

Committee Chair Yukimura: And it does say, Officers and their Duties?

Mr. Mickens: No, it just...on Rule 16 B, C.

Committee Chair Yukimura: Okay, so you have another version. Is this Maui?

Mr. Mickens: Yes, it's Maui, committee and the council.

Committee Chair Yukimura: Okay, I had that problem earlier today when I was trying to track things on. I think that version of the Maui rules is different than this version.

Mr. Mickens: Okay.

Committee Chair Yukimura: We may have a more updated one.

Mr. Mickens: Okay, thank you.

Committee Chair Yukimura: Any further discussion?

Ms. Nakamura: So is this meeting...it would not be sunshined because there's no decision making?

Committee Chair Yukimura: I understand and certainly the county attorney can comment now or as we firm up the wording of the rules, I understood that internal matters don't have to be sunshined. And in fact I think there's an OIP opinion on that, which maybe the county attorney can...

Mr. Castillo: Yeah, I prefer not giving you legal advice at this time and just work on the proposals and then we'll discuss the proposals at length later.

Committee Chair Yukimura: Thank you, county attorney. And I'm just recalling there's actually an OIP memo on it.

Ms. Nakamura: Okay, so we'll see what Jay thinks and then go from there?

Committee Chair Yukimura: Yeah. Any more discussion on that? Okay, move on. Is there anything else in the rules that's not listed that you want to talk about up to Rule 3 of our rules?

Ms. Nakamura: This is...in the county charter it says that the chair is the administrative officer of the legislative branch or something to that effect. Is that captured here in our rules?

Committee Chair Yukimura: I don't think so.

Ms. Nakamura: Some of the other counties have it pretty clear.

Committee Chair Yukimura: Yes.

Ms. Nakamura: I know in Honolulu, the chair is actually noted as the CEO of the legislative branch. If we're going to be consistent with the charter, the administrative officer, I think, is what's used. So I was wondering if we could put that in here. But it also raises the question of what does that mean. And when you look at...it really varies from the different counties because their structures are so different. When you...I was looking at the Honolulu one and I think maybe the Big Island might be the closest to ours because it's all more in-house and you don't have a separate office of council services. It's all under one office. So, it's a little different looking at the Honolulu model. So as I was looking at the Big Island model and you look at the duties of the chair and the county clerk, it's very different. Because the Honolulu one, let's say, the chair as CEO runs the staff meetings, but the staff meetings doesn't include the office of council services. That's a separate staff. The Big Island one, if you look under county clerk on the Big Island, page 44-45. See and this is a little different from how our rules...our charter

because the county clerk on the Big Island 2(a), is responsible for the administration of the Office of the County Clerk. And (g) exercise direct supervision over agencies and staff of the legislative branch of the County. Very different from what the Honolulu rules say. So, I just wanted to get some feedback about the range of responsibilities that's out there.

Committee Chair Yukimura: Can we get our organizational chart and what else do we want?

Ms. Nakamura: I'm curious to get your feedback too on these.

Committee Chair Yukimura: Yeah.

Mr. Kawakami: As far as the county clerk, the...

Committee Chair Yukimura: The clerk shall be appointed by and serve at the pleasure of the Council under the direct supervision of the Chairperson. That's in the county Rule 28, under the county clerk. So that kind of defines...

Ms. Nakamura: Right.

Committee Chair Yukimura: And that may also define the chairperson's administrative role being over the clerk and over the auditor organizationally.

Ms. Nakamura: Right.

Committee Chair Yukimura: And then each of them has people under them. But the council, represented by the administrative officer who is the chair of the council, is the one that does the administrative...and that's why, I guess, is the protocol...no, not protocol, the procurement officer of the legislative branch according to Ernie. So, yes...

Mr. Kawakami: Quick question. And I'm wondering if the rule, as far as the duties for the county clerk and the city clerk, is a flaw on the county of Hawaii's part and the only reason I say is it appears that and I'm not sure, but I'm reading that the city clerk of the City & County of Honolulu actually has less oversight, I think, over the staff. Is that what I'm reading? I'm not sure.

Ms. Nakamura: Let's...

Mr. Kawakami: Because it says in Big Island's, yeah...

Ms. Nakamura: Yeah.

Mr. Kawakami: If you go over to...what page is Big Island's one (inaudible)...

Ms. Nakamura: Big Island is 29, I'm sorry.

Committee Chair Yukimura: Well, it's for the...there's a presiding officer on page 5, which is the chair of the council, and then on 44, there's the description of the role of the clerk.

Ms. Nakamura: Right.

Mr. Kawakami: Are we discussing the role of the clerk?

Committee Chair Yukimura: We're discussing the role of the council chair vis a vis the clerk...

Mr. Kawakami: Okay.

Committee Chair Yukimura: ...and how that's all organized. So Councilmember Nakamura said that in our charter it says that the council chair is the administrative officer of the legislative branch.

Mr. Kawakami: Okay.

Committee Chair Yukimura: So that puts him above...I mean there's the administrative branch, which is the mayor, and then the legislative branch, which is the council, a section of the county government, and the head of that administratively is the chair of the council. And under him or her is the county clerk and now the county auditor.

Ms. Nakamura: Right.

Committee Chair Yukimura: And then under the clerk is the council administrator and all the other staff. And then the county auditor has begun to build his little branch right over there.

Ms. Nakamura: So the question that I have is who has the direct supervision over the staff of the legislative...of the staff? Is it...

Committee Chair Yukimura: I think it's the clerk.

Mr. Kawakami: Yeah.

Ms. Nakamura: Or is it the chair?

Committee Chair Yukimura: It's the clerk.

Mr. Kawakami: Yeah.

Committee Chair Yukimura: Because...I mean that's what we'll see in the organizational chart.

Ms. Nakamura: Yeah.

Mr. Kawakami: One point that I would like to bring out, though, is that the other counties, I believe, it's a little different scenario because each individual councilmember has personal staff and I'm not sure that the city clerk or the county clerk has the jurisdiction to go and start directing personal staff.

Committee Chair Yukimura: He doesn't.

Ms. Nakamura: Right.

Committee Chair Yukimura: No.

Mr. Kawakami: I think that's...yeah, that's the only thing, yeah?

Committee Chair Yukimura: There's an explicit exception to his administrative oversight.

Ms. Nakamura: Right.

Committee Chair Yukimura: You can see the chart here. I don't know what that line is to the audit manager. That's what you were uncovering.

Ms. Nakamura: Yeah.

Committee Chair Yukimura: But you can see that basically there's two branches. One's much more fully developed than the other.

Ms. Nakamura: Right, right. Then I think we should try then under county clerk, page 5(c) of our rules, shall serve at the pleasure of the council under the direct supervision of the chair.

Committee Chair Yukimura: I'm sorry, what did you just say?

Ms. Nakamura: See, under the Big Island rules, it says, the county clerk shall be appointed by and serve at the pleasure of the council under the direct supervision of the chairperson. That's accurate for Kaua'i also, right?

Committee Chair Yukimura: Yes, to my knowledge and we have our council administrator here, Rick Watanabe. So, Ricky, is that correct what Councilmember Nakamura says that...you want to repeat?

Ms. Nakamura: The Big Island section here, the county clerk shall be appointed by and serve at the pleasure of the council under the direct supervision of the chair.

RICKY WATANABE: You're asking me if that is applicable to Kaua'i?

Ms. Nakamura: Yeah, yeah.

Committee Chair Yukimura: You should take the mike.

Mr. Castillo: Just for the record, Al Castillo, yeah. In your effort to...my suggestion is this, because it is confusing if you're going to read all of the different county charters because the way that they have their government set up is different from the way we have, and to do an entire analysis on the way each county does and the reasons why, and then to tweak your own county rules, and then if you follow, you try to change the county rule, we still, on the legal end, we still have to balance that with what the charter provides. So if...I don't know how...I can see what you're trying to do, but I don't know if you want to say who is responsible for the county clerk and to what extent is he responsible for the administration of his office because on this end we're trying to follow along what the thought process is. Maybe if this subcommittee can basically give guidance to the regular council as to...

Committee Chair Yukimura: Can what, excuse me?

Mr. Castillo: If this subcommittee, I assume, is going to give input or make recommendations to the entire council?

Committee Chair Yukimura: To the Committee of the Whole.

Mr. Castillo: I'm sorry, to the Committee of the Whole. But we have to keep in mind first of all what our charter says and not get confused with the other charters out there.

Committee Chair Yukimura: Our rules have to follow within the charter and they can repeat the charter. So I think clarification in the rules is probably a good thing. And if there are any legal considerations, we definitely want to hear that. But now...did you get your question answered?

Mr. Kawakami: I got maybe something to...maybe if you look under Rule No. 3 and that would be on page 5 and (9).

Committee Chair Yukimura: Our rules?

Mr. Kawakami: Our rules.

Committee Chair Yukimura: Okay.

Mr. Kawakami: And this deals with our council chair and it...I don't know if the language is tight enough for you, but it does say that his job is also to act as the liaison between the council in matters dealing with the clerk's office. So that would be language that would kind of point that he's going to be the middle guy between us and our county clerk in dealing with that matters and that may address some of that. But then again, it might not be clear enough. But when I read it, it kind of hits upon what you were getting to.

Committee Chair Yukimura: Well, you know, there is a difference between a liaison and head of or...

Ms. Nakamura: Supervisor.

Committee Chair Yukimura: Yeah, supervisor of. It's sort of two different roles and the council chair may play both roles.

Mr. Kawakami: Maybe...

Committee Chair Yukimura: I want to make sure that Councilmember Nakamura's question got answered. Did your...

Ms. Nakamura: Yeah, I think it...what I'm trying to do is maybe combine some of what's in the charter with our rules...

Mr. Kawakami: Oh, yeah.

Ms. Nakamura: So if somebody can just look in one place and see it and not have to thumb through two documents. So I guess I was trying to make it easy for myself. But, so one was about this direct supervision piece and the other one is the liaison piece. Both...one is...I think what we have now... Is there anywhere that says that the county...that the chair supervises the county clerk?

Committee Chair Yukimura: It doesn't say in these rules that I know of and it's...I actually share your desire that the rules be as complete as possible and you'll see from the other counties' rules that they put down the duties of the chair and they cite the source of the original law.

Ms. Nakamura: From the charter?

Committee Chair Yukimura: Like from the charter or sometimes it's a Hawai'i Revised Statute.

Ms. Nakamura: Right.

Committee Chair Yukimura: So that people...

Ms. Nakamura: Even a court case that's guiding their...

Committee Chair Yukimura: Perhaps that may be true too. Anyway, so that the duties of the chair are pretty clear. It's not like it's silent because it's in the charter, but that forces you to go look at the charter. And if you don't go look at the charter, you might have an incomplete idea of what the role...the duties are.

Ms. Nakamura: I'm just raising that as a question.

Mr. Kawakami: Yeah, it's a good point, if I may have the floor too.

Committee Chair Yukimura: Yes, go ahead.

Mr. Kawakami: You know, just a little bit of history. You would know more than anybody outside of staff, but when we first dealt with these rules, I went and asked some people that have served on the council prior and to some of the staff as to what were the intent behind the rules and very simply, they put it that one of the...and there were some revisions made to it and it has changed a little and it's changed in the fact that there were changes made to provide more protection to the staff from the politicians. That was my understanding that the rules, largely in part, are made to protect the staff and create a buffer between the politicians and the staff. And the charter is to create a buffer and protection for the people of Kaua'i and our county from the politicians. And the way I read it, I don't have a problem with the chair being a liaison because to me it gives more power to the individual councilmembers and the council as a body to kind of guide the chair as to what direction versus the other rule that I'm reading on the Big Island, it kind of takes some power away from the councilmembers because now the clerk is under the direct supervision, and it's one of the rules, versus now our council chair is only a liaison. So we as a body can go and say, hey, you know, this is the direction that we would like to go in, and it doesn't give him so much explicit power over one key employee in our government structure.

Committee Chair Yukimura: The problem is, though, that the charter says that he's the administrative officer.

Mr. Kawakami: Yeah.

Committee Chair Yukimura: I mean and one thing the rules cannot do is...

Mr. Kawakami: Go less, yeah?

Committee Chair Yukimura: Yes and the other thing is that when you create a buffer between the politicians and staff, I mean if that is one of the rules in mind, I think you want to be more explicit. You don't want staff to be intimidated or guided by politics rather than ethical behavior. On the other hand, you want the people that have been elected by the public to be able to ask for accountability from the staff too, I mean because it can work both ways. You can have a staff that is sort of beyond their bounds and your needing to pull them back in. And then the other way is that you have politicians who are not accountable and there's staff who are trying to do the right thing, and the politicians are preventing it and creating a lot of problems. So, it's this...the main thing you want is accountability to right action...

Mr. Kawakami: Yeah.

Committee Chair Yukimura: ...or to ethical action that's in the public interest, and you need checks both ways.

Mr. Kawakami: And Madame Chair, if I may, I believe that those checks and balances are in place currently. Currently the way that it's structured is if we have staff that's not accountable, we hold our county clerk accountable because he is our employee; we appoint him. And if he cannot correct the problem, and then it's up to the politicians to have the political will to go ahead and make the necessary changes. Because coming from a background where we have to deal with all these layers of accountability, the accountability starts from the top down.

Committee Chair Yukimura: That's correct.

Mr. Kawakami: And so I believe that the current mechanism that we have addresses exactly what you pointed out. Now what the problem has been is that we just have, you know...it's a challenge, you know.

Committee Chair Yukimura: Yes.

Mr. Kawakami: But I believe it's there. There's an old saying that if it ain't broke, don't fix it. So, are you saying that there's something broken within that chain?

Committee Chair Yukimura: Someone just told me that if it ain't broke, figure out how to make it better.

Mr. Kawakami: Are you saying that you can make that better by making changes to that?

Committee Chair Yukimura: I think that's why we're all in government, right?

Mr. Kawakami: Yeah.

Committee Chair Yukimura: Because we're looking... And so we're trying to see... Okay, our goals are clear and unambiguous, current, it reflects your current practices that may have evolved over time, but the rules didn't evolve with them. I mean for example the whole IT issue, right? And then fair and efficient, and I mean you could say it keeps people accountable or whatever. But I think the proposal that we include the charter provision that the council chair is the

administrative officer or the head of the legislative branch is a really good clarity to give everybody. Because first of all it's in the charter, it's absolutely the intention of the people who...I mean if we take the charter as the governing document. Okay, yeah. So the chairman of the council shall be the administration officer of the staff/employees and we can just put that in there and to me it makes it very clear. And we can't...

Ms. Nakamura: That's very...I think what...that's different from what...

Committee Chair Yukimura: From a liaison.

Ms. Nakamura: I mean it is...in a way. It depends what...the problem is I don't think administration officer is defined.

Mr. Kawakami: I would personally want to change that charter, just my personal opinion.

Ms. Nakamura: Well, that's why, yeah.

Mr. Kawakami: That's scary, in my opinion.

Ms. Nakamura: Yeah, that's why when I saw that I said, wow, you know, that's a very different model than what I think I've been seeing here. But...so what I did was looked at the...

Committee Chair Yukimura: That's the ultimate accountability, though, the person who's been elected by the people.

Ms. Nakamura: Well...

Committee Chair Yukimura: But there's a check on it because...though the council doesn't always use the check. The council can change the chair of the council.

Ms. Nakamura: That's right. But can we take a look at Honolulu?

Committee Chair Yukimura: Sure.

Ms. Nakamura: Page 6. What I like about the way Honolulu has it set up is that on page...they talk about the role of the chair and then they recognize that the chair has two separate roles. One is as the presiding officer, so that's with the meetings, everything related to meetings, that's one set of duties.

Committee Chair Yukimura: Wait, what rule are we on?

Ms. Nakamura: On page 4, it shall...B...City & County of Honolulu. There's a whole list of the duties of the presiding officer and that we pretty much have in our charter, so it's very consistent. What we don't have, which Honolulu has, on page 6(c) is the roles and duties as chief executive officer. So in our case it would be administrative officer. And what it lists here are what that means, so it's very explicit. The first two I'm not too...well, let's see, to preside over staff meetings—that's separate because they have the office of council services, so the staff is just their own...I think their council staff is separate from office of council services.

Mr. Kawakami: Yeah.

Ms. Nakamura: So that may not be applicable. But to...this one is to exercise—this is the language—supervise over agencies and staff of the legislative branch.

Committee Chair Yukimura: That's the definition of chief administrative officer.

Ms. Nakamura: Okay. Now they have that exception here because in Honolulu they have personal staff, which we don't, so we don't have to look at that. But if you go down the list here, (3) to provide for the coordination of all administrative activities—that's the one that Ernie mentioned earlier—to sign all instruments requiring execution agreement; to act as the chief procurement officer—so that's explicit. We should probably add that language. To serve as the chief spokesperson and representative of the council for matters before the public, state and federal government, and city administration—that seems reasonable. To assist the chair and members of standing committees and subcommittees by assuring the availability of adequate administrative and staff support—seems reasonable. To develop an annual calendar of events to include meetings, recesses, special meetings, holidays, and then to delegate by administrative directive any of the duties assigned—that's your catchall that you mentioned earlier. So to me, some of these we may want to...if we break it down into those two different separate roles of the chair, it would give me more clarity.

Committee Chair Yukimura: Yes, it gives...what you just went through gave me more clarity too. I can see the two different roles: one, presiding over the meeting and two, being the administrator of the legislative branch.

Ms. Nakamura: Right.

Committee Chair Yukimura: And it certainly would...it's aligned with the charter and it would give more clarity.

Ms. Nakamura: Let's...so, I mean, I think I want to mull it over and see and get reactions from people about this. But...

Mr. Kawakami: You might want to just get the language in the charter and put it in the rules.

Committee Chair Yukimura: Yeah and actually the City & County Rules actually makes more explicit administrative officer.

Mr. Kawakami: Yeah, because if it's the charter we cannot do nothing.

Ms. Nakamura: But I agree, I think it should...I mean we should be explicit in what...follow what the charter says.

Committee Chair Yukimura: Yeah.

Mr. Kawakami: Got to, yeah?

Ms. Nakamura: Yeah.

Mr. Kawakami: Okay.

Committee Chair Yukimura: Okay, any other discussion on the duties of the chair?

Mr. Kawakami: Yeah. Going back to your suggestion on Ideas for Rule Changes, suggestion 7-d, right, the chair's meeting, it's kind of going back.

Committee Chair Yukimura: Yes, yes, yes.

Mr. Kawakami: You know why, I had something...I was kind of thinking about that one.

Committee Chair Yukimura: Can you talk more loudly.

Mr. Kawakami: Oh, sorry.

Ms. Nakamura: What page are you on?

Mr. Kawakami: This would be in Maui's rules, on page 6, No. 14.

Committee Chair Yukimura: Maui?

Mr. Kawakami: Yes.

Committee Chair Yukimura: Rule 6?

Mr. Kawakami: Yeah, you know on this one and on a number of matters, I'm going to suggest that you allow me to go back to my members of HSAC to get further clarification because the way I'm reading this is that this chair's meeting may be also read as...well, you know what? I'd just like to go back to HSAC and get more clarification from the members on Maui on this one and what they actually discussed.

Committee Chair Yukimura: I'm sorry, I'm still not with you yet.

Mr. Kawakami: Oh, sorry, on page 6 on Maui's rules, No. 14.

Committee Chair Yukimura: I'm sorry. Thank you. Was that the one Ernie talked about? Oh, the 14, okay.

Mr. Kawakami: Yeah, this is the chair's meeting. I just want to know what they're talking about because...if it's dealing with...and I'm always thinking about that...well.

Committee Chair Yukimura: Sure. It'll be great to get Maui input about how they exercise that rule.

Mr. Kawakami: On a side note, if there's anything here that you guys want me to bring back to the members of HSAC, just make a note and send it and I can just... Our next meeting is going to be after your proposed next rule subcommittee, so what I'd like to do is get it to them as soon as possible and have them just correspond directly to us.

Committee Chair Yukimura: Right. I mean I don't know if the whole of HSAC needs to be involved, but because this is a Maui rule the Maui people...

Mr. Kawakami: Yeah, yeah.

Ms. Nakamura: That sounds great.

Committee Chair Yukimura: And maybe even outside of the HSAC delegate, I mean from Maui, if you have other contacts in Maui. That would be great. So you will try to get some input before our...

Mr. Kawakami: Absolutely.

Committee Chair Yukimura: Okay, wonderful. Any other...

Mr. Kawakami: Especially on the ones that you earmark for me and say, hey Derek, go back and find out what they're doing here.

Committee Chair Yukimura: Okay, any other discussion about that? Okay, Ken. You know, I'm looking at our time frame and realizing we're not even halfway through and we wanted to finish by an hour and a half. So, I may have to hold off on discussion right now so we can...and then we'll let you talk at the end, if that's okay?

Mr. Taylor: I just wanted to ask about two considerations under our Rule 3(c).

Committee Chair Yukimura: Is this a new item?

Mr. Taylor: No, I don't see it on your...

Committee Chair Yukimura: Okay, so if it's a new item, can you just...yes, I don't know that we're going to get to that. So can you put it in writing or at the end of this meeting you can bring that up. Thank you. Because I think we have to get to Rule 10. So I'm going to try to...(inaudible) we move ahead. I think I'm going to skip over some of the smaller ones because we can just put that in writing and have people look at it. I want to get to Rule 10, which was the issue that Councilmember Kawahara brought up at our inaugural meeting and the issue of the chair initialing...how to get items on the agenda.

Ms. Nakamura: Okay.

Committee Chair Yukimura: Because I think that's been a...actually that's been the impetus for this rules committee being formed...

Ms. Nakamura: Okay.

Committee Chair Yukimura: ...one of them and so if we can just all go and look at Rule 10.

Mr. Kawakami: I'm sorry, Madame Chair, I'm going to step out for one second.

Mr. Mickens: JoAnn, are you on 12 now then?

Committee Chair Yukimura: Okay.

Mr. Mickens: Are you on 12 now then?

Committee Chair Yukimura: Yes.

Mr. Mickens: Rule 10.

Ms. Nakamura: Yeah, (inaudible).

Committee Chair Yukimura: That's right.

Ms. Nakamura: No. 12, item 12.

Committee Chair Yukimura: Yes, we are on item 12 of the Ideas for Rule Change. Okay, Placement on the Agenda, right? Rule 10(c), all bills and resolutions must be initialed by the council chair or, in the chair's absence, the vice chair or designated chair as stated in Rule 3, in order to be placed on the agenda. Okay. So people are feeling that this would allow for an item never to get on the agenda or to have to wait inordinately long to get on the agenda.

Ms. Nakamura: And this is related to Rule 15 also, right, (b)?

Committee Chair Yukimura: I think so, yeah. And yes, Councilmember Nakamura's pointing out that Rule 15(b) says, all communications to be placed on the agenda must be initialed by the council chair, received by the council or the office of the clerk on the Friday two weeks preceding the day of the regular or committee meeting. Okay, so any thoughts?

Mr. Kawakami: Yeah, on Rule 15(b), all we're referring to is just the initialing part, not the requirement that items are received two weeks preceding the day of the regular, yeah? Because that one has a great purpose for it. It's so that us politician's don't just throw things on staff's desk and tell them, take care of this. So all we're referring to is just the initialing part, yeah? That we're considering doing away with that requirement?

Committee Chair Yukimura: Yes, no. Rule 10 is that initial one. First of all yes, we're only talking about the initialing requirement, not about the timeframe for submitting things in order to get it on the agenda.

Ms. Nakamura: That's the staff protection provision.

Mr. Kawakami: For us too.

Committee Chair Yukimura: Actually it protects everybody.

Mr. Kawakami: Yeah, so we're not here until like 8:30 at night every meeting.

Committee Chair Yukimura: Right.

Mr. Kawakami: That's why we have this provision in there.

Committee Chair Yukimura: The initialing provision as well.

Mr. Kawakami: Yes, yes, and it was never intended for it to be a tool for the chair to not include things on the agenda. And to be quite honest with you, the way that it was applied previously is in the past. Our current chair has been great at making it open for everybody to place things on the agenda. I think it's a rule that requires no change to it, in my personal opinion. Because I think that administratively for him he's got to try to time things with staff and all of us to be mindful of our time so that...you know there's going to be times where there's seven of us are going to want three things on, and we'll be very unhappy if he didn't have that latitude to manage the agenda, and we're stuck here, and yeah, there could be some real deep unintended consequences, yeah.

Committee Chair Yukimura: Any other thoughts? Councilmember Nakamura?

Ms. Nakamura: I think what you're saying is we want to give the chair the latitude to schedule and to create agendas that are manageable for everyone. So maybe if we could state that, but I don't know, this initialing, I think, is the thing that...

Committee Chair Yukimura: Well, that's the actual control.

Ms. Nakamura: That was the control, okay.

Committee Chair Yukimura: And you have stated the purposes for the control very well. The thing is that we've seen that it can be abused and not used just for the management of an agenda but to stop certain things from getting on the agenda. Now, if you recall Judge Laureta in his testimony mentioned that there's always...actually in other counties' rules they say that...they have certain things the chair can do subject to the council. And Judge Laureta pointed out that in Robert's Rules of Order and maybe in these rules that the chair's decisions are subject to appeal from the council.

Ms. Nakamura: We have that in our rules.

Committee Chair Yukimura: Right and so there's already this check. Now we can make the thing more explicit in order to prevent abuse, if we want. For example, we could say, and this is just one of multiple possibilities, that if a councilmember has attempted to get an item on the agenda for two or three meetings or a month or two months without good reason for delay from the chair that request from...signed by two other councilmembers would allow it to be on the agenda within the next month. Well, our staff is saying, sunshine. Just requesting something to be on the agenda in not making...I don't think is a violation of the Sunshine Law. If it is, we'll find out. But...we have legal assistance.

Mr. Kawakami: Could I make a comment? Oh sorry.

Committee Chair Yukimura: Oh, okay. So our legal analyst just sent me a note saying, serial communication. But I think, again, a request to put something on the agenda is not a decision making issue for the council or else it could be something else. We could say that the person shall be entitled to put on the agenda a request that this item be on the agenda. And maybe that's allowed already except that the council chair could refuse that too.

Mr. Kawakami: I'm going to inject some humor in this, but you remind me of my wife. You can turn something simple and make it so complicated, but hear me out.

Committee Chair Yukimura: Well, you give me something simple to prevent abuse.

Mr. Kawakami: Okay, hear me out. And we've demonstrated it. We have demonstrated. There is a system with checks and balances. Now, here's where people have heartburn. Politics, the nature of politics, that's where people have heartburn, okay. This rule doesn't allow him to block it, okay? But if we're going to start putting timelines on it where, hey, they cannot hold it off for more than two or three weeks, to me that defeats the purpose...

Committee Chair Yukimura: Two or three meetings.

Mr. Kawakami: Yeah, two or three meetings, to me that defeats the purpose of having the chair manage because who's to say that two or three meetings we're not going to have a stacked agenda anyway? Now, here's the thing. If for any reason, yeah...if for any reason you're not happy with the way the chair is handling things, okay, we're still living in a democracy where majority rules and there's a voice of the minority, but nonetheless the majority is going to rule. And if the majority of the members aren't happy, they can replace the chair with somebody that will operate in a manner that is more befitting of a chair. Now, whether or not we can get the votes to do that is neither here nor there. That comes down to political will. But in our last council we've had instances where we've had members, individual members, come up on the day of a council meeting and say, I move to amend the agenda and I want to put this on, and it went to a vote, and it got two-thirds majority vote, and on the following council meeting that item was heard. And so that is the checks and balances. That's already there. Now, is it the cleanest possible way? Absolutely not, but to me if you gotta go down that road, there's a flaw somewhere. And whether or not we can correct the flaw remains to be seen, but there are other avenues to get to that same finished product that we're looking for.

Committee Chair Yukimura: There are many and that's what I was saying. The whole purpose of rules is to minimize the politics and the politics in this case was a recalcitrant chair who wasn't denying a bill because of management but because of politics. So how does the rule...how do we shape the rule to minimize the politics and allow some even-handed handling of the situation is the question.

Ms. Nakamura: So we're all saying that Rule 15(b), the part about the two weeks' notice...all communications to be placed on the agenda with the two weeks' notice. Is...the two weeks' notice, we're saying, is a good thing.

Committee Chair Yukimura: We're not talking about that (inaudible).

Ms. Nakamura: Right, I know, but what we're saying is...what I would like to see is...we want to...with this chair, I feel that I would like to give him some discretion to schedule items, to manage the business of the council's...you know, the agenda and that's all I want to say. I want to say two weeks, but you have some discretion.

Committee Chair Yukimura: The rules are designed not just for good chairs. They need to be designed...

Ms. Nakamura: It's for our chair.

Committee Chair Yukimura: No, they're...it's too...for any and all chairs, for the chair before as well as the chair now. That's what the rules are for. It doesn't matter...

Ms. Nakamura: But every council adopts their own rules.

Committee Chair Yukimura: Well, that's true.

Ms. Nakamura: Every council. So this is our rules for this council and next time there's a new council, they will adopt their own rules. And we can through resolution change our rules, through a resolution. That's what our rules say.

Committee Chair Yukimura: So you're saying that it's not necessary to...you don't see any need to change the rules, except to...

Ms. Nakamura: No, I'm saying I don't mind getting rid of the must be initialed by the council chair. I think we can take it out. I feel okay taking that out. All communications to be placed on the agenda must be received by the council or the office of the county clerk by 4:30 the Friday two weeks preceding the day of the regular council meeting. However, I want to give our chair some discretion so that the agendas are manageable for us.

Committee Chair Yukimura: Well, you know, we really have to look at 10(c) more than 15.

Ms. Nakamura: Okay, that's my recommendation for this section.

Committee Chair Yukimura: Okay. Well, see the Rule 10 is about placement on the agenda. So when we decide how to do that, 15 will fall into place. You still have to say that it shall be the chair's...all bills and resolutions will be placed on the agenda in the chair's discretion in order to manage the agenda is what I hear you saying and maybe different words are...

Ms. Nakamura: Yeah, it seems like this item is kind of redundant to have it in two different places.

Committee Chair Yukimura: Yeah, we could move that.

Ms. Nakamura: I think we should have one process, so take out 10(c) or take out 15(b).

Mr. Kawakami: Oh.

Ms. Nakamura: No?

Mr. Kawakami: Nah, just a difference...no, you are right. And well, there's no right or wrong. So I'm just seeing it differently, maybe you're just from a different angle. I hear you.

Committee Chair Yukimura: I think in every county there has to be some process for placing something on the agenda.

Ms. Nakamura: I couldn't find it in Honolulu.

Committee Chair Yukimura: Okay, so that's what we're talking about. We don't even have to talk necessarily about where it's going to be placed right now. But I'd like to just talk about what would be the process for placing something on the agenda.

Mr. Kawakami: You want my opinion?

Committee Chair Yukimura: Yes.

Mr. Kawakami: The same process that we're doing right now.

Committee Chair Yukimura: With the initial.

Mr. Kawakami: Yeah.

Committee Chair Yukimura: Yes, I think you said that. And you feel that it would work okay too?

Ms. Nakamura: I guess I...myself I would want to change the wording of it, but I think it would be the same end to Councilman Kawakami's recommendation.

Committee Chair Yukimura: Okay.

Ms. Nakamura: Because that initial is really giving him the discretion on when.

Committee Chair Yukimura: So I'm of another mind that it would be really helpful to frame a check on the process so that it...to minimize abuse potential and I'll take some time to think about how that might best be framed or worded because I think your point is a good one, Councilmember Nakamura, that the rules are for each new council. But I think they also establish a certain momentum and framing that does keep going down the chain and the problem that we experienced was in the previous council I think was a problem we need to address. So, go ahead.

Mr. Kawakami: Maybe to make things a little more clear, maybe it would require us becoming more clear in our language in Rule No. 15(d) and maybe proposed language would read to the tune to pursuant to Chapter 92 HRS, the council or committee shall not change the agenda once filed by adding items thereto without a two-thirds recorded vote of all members to which the body is entitled and then you could put in language saying that upon approval that item would appear in the next council meeting, which is what happens anyway. But then it would become more clear. Because the problem we had at the last council wasn't that there wasn't a way to get items on the agenda. It was a matter of individual councilmembers not reading the rule and understanding how to apply it. That's where the problem was. They didn't understand it. There was another vehicle to say, hey, you know what, I want my thing on now and so you know what? I'm going to do this. I move to amend the agenda by placing this item at the next council meeting upon which the chair is now, if there's a second, is required to have some

deliberation, a vote is going to be recorded, and if it's affirmative, hey, it's on. So it wasn't a problem of it not...there not being the mechanism to get things on. It was a problem that somebody didn't know how to apply the rule.

Committee Chair Yukimura: I don't...I'm not sure I understand what you just said.

Mr. Kawakami: You want me to say it again? More simple. They didn't know how to apply Rule 15(d).

Committee Chair Yukimura: Okay and...but you can't add an item even with a two-thirds vote to that agenda.

Mr. Kawakami: To that meeting, yeah. But the next one it gets on.

Committee Chair Yukimura: Okay, so what you're suggesting is that we add wording here?

Mr. Kawakami: You could to make it more clear so that if somebody's reading the rules and they say, hey, you know.

Committee Chair Yukimura: I mean there's nothing here that says that the item will be on the next meeting.

Mr. Kawakami: That's where the problem is. There's no specific language, so thus you have rules that are not clear, and it's ambiguous, and so unless you're reading it carefully and really putting thought into it, you would not be able to interpret that. So maybe you need to make it more clear.

Ms. Nakamura: Okay, so you're talking about 15(d)?

Mr. Kawakami: Yes. And we had a county attorney opinion the last time saying that that was a perfectly acceptable way of getting things on the agenda.

Ms. Nakamura: What was the language you had after entitled?

Mr. Kawakami: Oh, it was just real bad, bad language.

Ms. Nakamura: But it made sense.

Mr. Kawakami: It was just to which the body is entitled...at the next council meeting. But there's fancier attorney language you can put in to make it sound professional.

Committee Chair Yukimura: Okay, so pursuant to Chapter 92 HRS, the council or committee shall not change the agenda once filed by adding items thereto without a two-thirds recorded vote of all members to which the body is entitled. So they're saying in that that you can add something by a two-thirds vote.

Mr. Kawakami: Yeah.

Committee Chair Yukimura: That's correct?

Mr. Kawakami: Yeah and the same...

Committee Chair Yukimura: Provided that no item shall be added to the agenda in the manner provided herein if it is of reasonably major importance and action thereon by the body will affect a significant number of persons. That's the Sunshine Law.

Mr. Kawakami: Yeah.

Committee Chair Yukimura: Right.

Mr. Kawakami: Yeah.

Committee Chair Yukimura: So if they want to...right now under this rule if they want to put something on of significance, they can't do it.

Mr. Kawakami: They can do it at the next council meeting.

Committee Chair Yukimura: But this doesn't say that and it doesn't require it.

Mr. Kawakami: But we did it.

Committee Chair Yukimura: I know, but we're not...rules are not designed...

Mr. Kawakami: I'm not disagreeing with you. I'm saying that it's not clear, so let's make it clear.

Ms. Nakamura: Okay.

Committee Chair Yukimura: Okay. So I was just trying to understand your thought process. So let me see here. By adding items thereto without a two-thirds...but this is even more difficult for a chair because he may want to manage the agenda and he won't have any time.

Mr. Kawakami: Yeah.

Committee Chair Yukimura: See, my proposal was he would have about a month or two to actually have the leeway to manage, but at some point he would have to get it on within a month or two.

Ms. Nakamura: Oh, I see.

Committee Chair Yukimura: That was my proposal. In this case, he would be able to just put it on...I mean he wouldn't be able to stop it at the next meeting.

Mr. Kawakami: Madame Chair, if I may, thus the system of checks and balances. There in itself lies the art and science of politics, and the art of the chair is to be able to reach out to his members and explain things about why I'm doing things a certain way. Now, if you start having an individual acting out all the time just to act out, and every single council meeting he's just using Rule 15 to prove a point, I'm sure that the system of checks and balances is going to find him in the minority by applying this rule at some point or time in his or her political career. What I'm really saying is if you have somebody that's always coming up

without even talking to the chair or just saying, hey, I going use Rule 15(d) and you know what? I feel like today I move to amend the agenda to talk about ducks, okay. At some point in time, people are going to say, well, this is a waste of time, no. And so you know there's checks and balances.

Committee Chair Yukimura: Well, they can't say no on this one.

Mr. Kawakami: They can say no. We can vote no and then he doesn't have the two-thirds majority vote.

Committee Chair Yukimura: But then it's not about the majority...it's not about the merits of the issue. It's about...I mean there should be another way to mediate that kind of behavior than to just vote against a bill which may have good merits.

Mr. Kawakami: May I suggest that we take this back as homework and then come back with something to propose.

Ms. Nakamura: Some other suggestions?

Mr. Kawakami: My suggestion is already out there that no change.

Committee Chair Yukimura: And I think it's a good one to consider and I'm just pointing out that it gives the chair very little discretion, you know. He has one meeting and it has to be on the next meeting. So there's a really good part of this, which is your addressing the issue of someone not being able to get an item on the agenda from a very unreasonable chair and then...but the other side is the point we wanted to address which is the chair needs some management. Okay, so why don't we all, yes, sleep on it, think about it and come up with some suggestions. And I would like to let the public speak to this one because it was such a major issue and so I want to suspend the rules and let them speak.

Mr. Kawakami: Sure.

Ms. Nakamura: I need to leave before 4 p.m.

Committee Chair Yukimura: Okay, thank you. So the rules are suspended and I want to invite...

There being no objection, the rules were suspended.

GLENN MICKENS: Thank you, JoAnn, for the record Glenn Mickens. The only two conflicts here were basically for the public was (a) and (c) that the council chair didn't have complete veto power if somebody wants...(a) says any member can put something on here it's saying, Derek, any member can put something on the agenda. I think JoAnn's suggestion is basically right that you should have no more than say 30 days, 60, whatever, a time period. If the agenda is full, like Mel was pointing out, what if you got a huge agenda, the council chair should have the leeway to be able to prioritize what he's putting on. That's understandable. And it may be you may have 10 items that should go on there. The council chair should have that priority. But he shouldn't have the priority to just defer it till it drops off the map. There should be a regulated time to go ahead, say 30 days or whatever to put it on. I do agree again with JoAnn that by your method, Derek, to put it on the next week's (inaudible), that may not be appropriate for the chair to have to do something like that. If in a prioritized basis he's already

going...putting his agenda together and I think that would, you know, would mess what he's trying to do up, trying to be in the democratic process. But Rule 15, I thought as JoAnn said, I think it will fall into place. I don't think it enters in here. All we're trying to do is basically keep the council chair from being a dictatorial type of a person to not do it. And you saw what was brought up about it, right? With two members last time continually arguing with the chair, and as you pointed out, Derek, hey, it was political to me. It was politics first class. I don't think there was any other thing about it. And if you do this in this manner, give the council chair the discretion in prioritizing his agenda, but that cannot be stopped, say 30...whatever you feel is a regulated time enough to be able to put it on the agenda, you know within 30 days. But it's going to have to come on the agenda, that's all.

But, you know, it was the hottest button issue, as you pointed out, on the agenda and I don't think it's really that complex to be able to keep the council chair and Derek, as you pointed out, I think we got a very, very good council chair now. I don't think it's going to happen with him. Nadine said okay maybe another council chair if they want to go ahead and change the rules they can, but I'd like to see the rules just stay the way they are and be able to whatever you happen to say, I think it puts a little more power, makes them a little more foolproof if you go ahead and just change it so any council chair, not our new one, but any council chair doesn't have that type of power.

Committee Chair Yukimura: Thank you.

Mr. Mickens: So that's my input.

Committee Chair Yukimura: Thank you very much.

Mr. Mickens: Thank you, JoAnn.

Committee Chair Yukimura: Mr. Taylor.

Mr. Mickens: Thank you Derek, thank you Nadine.

KEN TAYLOR: Hey coach, time for the bullpen. Chair and members of the commission or council or committee, it's a committee. My suggestion would be to...

Committee Chair Yukimura: Your name please.

Mr. Taylor: Ken Taylor. My suggestion would be in Rule 10(a) in the first sentence change it to read "any bill or resolution may be introduced by any member of the council and shall be brought to the agenda in a timely manner, not to exceed 120 days." That gives the chair ample time to work it into the agenda so it's not becoming a problem with that activity and so it gives him discretion. In a timely manner, I would hope that it would be done as soon as possible, but at least no later than 120 days.

Committee Chair Yukimura: Thank you.

Mr. Taylor: There was another concern I had. I forget now. Nadine raised an issue...

Committee Chair Yukimura: Was it Rule 3, 4...I think you were saying 3 or 4?

Mr. Taylor: I'm sorry.

Committee Chair Yukimura: Rule 3 or 4? Was that the one you wanted to add to our list?

Mr. Taylor: Well, yeah, there's a couple. Immediately in front of Rule 10 is Rule 9 and it's in reference to "Any person may petition the council. Petitions and other matters shall be in writing, with at least the name of the petitioner signed. The petition shall be disposed of by the chair, including its referral to the proper agenda." And again I would suggest that that have a within 60-day timeframe and that's a petition, I believe, from the public. And the reason I raise that is that I know this past year there was a petition sent...presented to the chair with over 20 signatures on it. And it never saw the light of day and I think that's wrong. I think when the public goes there...anyway, that's something to consider.

On Rule 3(c) under county clerk, I would like you to consider two items, and one is maintain a board packet at the front desk.

Committee Chair Yukimura: Okay, your time is up, but I'm going to let you do another three minutes, and then I'm going to actually stop all testimony and just try to finish up. It's going to be incomplete. All right, so go ahead.

Mr. Taylor: All right. Maintain a board packet at the front desk. Post the agenda and backup material on the website. I think there's...you know, one of the problems as how things are being done, all of these documents today are being generated in the computer and there's absolutely no reason why they can't be made available electronically when the agenda goes out. Where I came from starting back in the '80s, you look at the agenda and you say, oh, agenda item number three, I'm interested in this. You click on that and here comes up all of the backup material on that item. A couple years ago...four...three years ago when I asked IT about what it took to do that and they said it's no problem it's just somebody has to tell me to do it. And I say recently when George Costa was here presenting the five-year economic plan, I asked George after his presentation if I could have a copy of his report of his five-year plan and he said, when I get back to the office I'll send you one. Well, making sure that I got one I asked one of the council people if they could see to it that I got one. Well, that night when I got home I had an electronic copy from George. Four days later I got one from staff...from the county clerk, and he apologized for taking so long to scan it. And I'm saying why in the world did he have to scan it? Every document that comes down from the administration, they should be coming down in electronic form and they should all be posted simply so that it's easy to disseminate that information because it is public information, and I know and understand that legal issues under closed session items, those are off the table, but the backup material on every agenda item should be easily available and I hope that through this process we get there and get that taken care of, so. I guess right now, we'll leave it at that.

Committee Chair Yukimura: Thank you. Any questions of Mr. Taylor? I have one. So are you advocating that the placing of documents...agenda items on the web be in the rules?

Mr. Taylor: Yeah.

Committee Chair Yukimura: Okay.

Mr. Taylor: Well, I don't know where else they're going to be. I mean, it's...when you read through the existing rules and regulations, there's...some things are here and some things aren't here and so it's confusing. So it's better to have everything here and then there's no question.

There being no one else wishing to testify, the meeting was called back to order, and proceeded as follows:

Committee Chair Yukimura: All right, thank you very much. Okay, we're back to order and Councilmember Nakamura has to leave by 4 p.m. and I think if we can just spend another 10 minutes. We didn't get through our list and what I'm going to...not all of them are big items. If there's anything in particular that jumps at you right now...

Ms. Nakamura: Can we talk about scheduling?

Committee Chair Yukimura: Yes, thank you. Okay, so what I'm going to do is we're just going to work up some wording for all of these then and circulate it. And then let's look at the schedule in terms of how that all fits. We have a calendar that was passed out thanks to staff. We're on the...do you have a calendar?

Mr. Kawakami: Yeah (inaudible).

Committee Chair Yukimura: So we're on the 27th of January taking us into February. Based on today's meeting, we wanted to circulate some proposed language by the 10th, have a meeting on that proposed language, send it to councilmembers and to the county attorney on the 10th, and then have a meeting on that. We had tentatively suggested the 17th, but Councilmember Nakamura won't be able to make that meeting. So we can identify another date. And then we had the 28th for an extra meeting if necessary and our rule report is due on the 7th to the Committee of the Whole. So we tried to map out a tentative schedule. So any comments? Well, let's just talk...does the schedule look okay except for the 17th and if so, we can change the 17th?

Ms. Nakamura: So are you saying that the other items on this list that we did not get to today, how are...you know I thought today's discussion was good and it was really good to hear your different perspectives on these items. So I kind of feel like we need another working session like this to get through.

Committee Chair Yukimura: Okay.

Ms. Nakamura: But that's just my opinion and so I don't know how that fits in with the schedule.

Committee Chair Yukimura: Councilmember Kawakami, you have any thoughts or preferences?

Mr. Kawakami: You gotta sunshine this meeting, yeah? You gotta...what is it? Two weeks, one week?

Committee Chair Yukimura: Six, seven days.

Mr. Kawakami: Six, seven days, so where would...

Committee Chair Yukimura: We would probably make the 10th the day that we have the second round of discussion because I'm not back until the 7th, yeah.

Mr. Kawakami: We can do...we're going to circulate the proposed language at the 10 and we can have further discussion on the...

Committee Chair Yukimura: Well, we might circulate some language of the ones we discussed and then just have a fresh discussion on the ones we haven't yet discussed. And then assuming we can get through it all, and my idea right off the top of my head right now would be to start on the ones we hadn't discussed first.

Ms. Nakamura: 1:30 on the 10th?

Committee Chair Yukimura: If we do that on the 10th and then just in terms of the big picture we would try to get maybe something circulated by the 17th or maybe the 24th and then have a meeting on the 28th to look at all the language.

Ms. Nakamura: That's fine.

Mr. Kawakami: So, we're looking at the 10th?

Committee Chair Yukimura: To have a second round.

Mr. Kawakami: The 17th and the 28th?

Committee Chair Yukimura: Yeah because you don't have to be here for the circu...I just need to know for our staff purposes. Why don't we say we'll try to get something out certainly before the agenda deadline for the 28th, but we'll aim for, in terms of something written and circulated, something between the 17th and the 24th, we'll get something out in a written proposal...written words.

Ms. Nakamura: Could I ask Councilmember Kawakami if we could get some feedback from your HSAC members about how they do scheduling?

Committee Chair Yukimura: Scheduling of?

Ms. Nakamura: Of the Rule 10...

Committee Chair Yukimura: Agenda.

Ms. Nakamura: The agenda item.

Mr. Kawakami: Okay.

Ms. Nakamura: In other counties.

Mr. Kawakami: Yeah.

Ms. Nakamura: Just out of curiosity.

Mr. Kawakami: Just at the top of my head, yeah, I'll do that, yeah.

Ms. Nakamura: Thank you

Committee Chair Yukimura: Okay, so back to the calendar. We'll meet on the 10th, we'll have something circulated no later than the 24th. Wait...no, the 22nd. Let's say no later than the 22nd we'll circulate, and then we'll have a meeting on the 28th.

Ms. Nakamura: All right.

Committee Chair Yukimura: And then we'll have...staff will have time too. So the meeting on the 28th will be a decision making meeting where we will take a vote on recommendations that we'll send to the Committee of the Whole. And let's see, so 1:30 p.m. on the 10th is our meeting and 1:30 p.m. on the 28th?

Ms. Nakamura: That works for me.

Committee Chair Yukimura: Councilmember Kawakami? I know it's subject to your IGR schedule.

Mr. Kawakami: (Inaudible.)

Committee Chair Yukimura: All right. Is there any further business at this time? No? Okay, do I need a motion to adjourn? I don't think so.

Ms. Nakamura: Move to adjourn.

Committee Chair Yukimura: If there are no objections, meeting is adjourned.

ADJOURNMENT.

There being no objection, the meeting was adjourned at 3:51 p.m.


Respectfully submitted,



WILMA AKIONA
Council Services Assistant

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APPROVED at the Committee Meeting on May 11, 2011:



JAY FURFARO, Chair
Committee of the Whole

IDEAS FOR RULE CHANGES

1. Table of Contents—do we want? (see other counties)
2. Adoption and Amendment History of Current Council Rules—do we want? (see City and County of Honolulu (CCH))
3. Credentials Committee – delete? Rule 1(a)(2)
4. Order of Committees on Committee Meeting Day Rule 1(c)
5. Rule 1 (b), (c), (d), (e) Notice on website Sunshine Law
6. Remove “physical” from phrase “physical majority” in quorum requirement
7. Rule 3 Add to duties of Chair
 - a. Assign duties not otherwise assigned by law or in these rules to the Clerk or County Auditor (HI)
 - b. Receive all communications and present them to the Council or committee before which the subject matter is pending See also CCH Rule 4, B(10), (p.4) and HI Rule 4 2(f). May also have bearing on Rule 10.
 - c. Dispose of matters properly brought before the Council, subject to appeal to the Council (HI)
 - d. Hold at least one chair’s meeting in each quarter of the year. See Maui Rule 6 A14.
8. “Journal” in Rule 3(c)(4)
9. Advisory Committees – CCH Rule 9 and Kauai Rule 4(d)
10. Rule 6(c) to “postpone or defer”

11. Rule 6(f) – Allow introducer of bill to speak as long as he wishes
12. Rule 10 – Getting bills or items on agenda
13. Consent Calendar
14. Public speaking time
 - a. 15 minutes
15. Certificates and Other Recognition
 - a. limit overall time or number of certificates
 - b. post on agenda
16. Council Member Responses to Testimony
 - must be made before meeting called back to order
17. Auditor's suggested rules. See public testimony from Auditor
18. 12(f) - Allowances for expert or guest testimony – to be longer than three minutes.
19. Rule 9 - Don't discard petitions.
20. 14(j) – Regarding public hearing time.
21. Workshop Rules
22. 15(c) – Communications from members shall be allowed on agenda